IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1846 of 2002
with
FIRST APPEAL No. 1847 of 2002
with
X-Objection No. 7 of 2007
with
FIRST APPEAL No. 1848 of 2002
with
X-Objection No. 8 of 2007
with
FIRST APPEAL No. 1849 of 2002

For Approval and Signature :

HONOURABLE MR.JUSTICE ANIL R. DAVE :

HONOURABLE MR.JUSTICE KS JHAVERI :

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

==========

ORIENTAL INSURANCE CO LTD. - Appellant(s)
Versus
NASRINBEN RAFIKBHAI & 5 - Defendant(s)

==========

Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR DC SEJPAL for Defendant(s) : 1 - 2.
SERVED BY AFFIX.(N) for Defendant(s) : 3 - 5.
NOTICE SERVED for Defendant(s) : 6,

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 These appeals arise out of the same accident and involve common questions of law and facts and, therefore, they are disposed of by this common judgment and order.

2.0 By way of these appeals, the appellant – Insurance Company has prayed to modify the common judgment and award dated 27th February, 2002 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar (for short, "the Tribunal") in Motor Accident Claim Petitions No. 922/1998, 362/1999 to 364/1999 whereby, the said claim petitions were partly allowed.

3.0 The genesis of the proceedings is the collision that took place on 20.10.1998 between a '*Maruti*' Car bearing registration No. GJ-4D-1517 (for short, "the Car") and a Tanker bearing registration No. GTS-8834 on the Bagodara - Bavla Highway near

Village Bhamsara, District Ahmedabad. In the said accident, three persons died and one sustained severe bodily injuries.

3.1 The legal heirs and representatives of the deceased as well as the injured filed separate claim petitions before the Tribunal claiming compensation against the Driver of the Tanker, its Owner and the Insurance Company with whom the said vehicle was insured. The details of the claim petitions are as under;

Sr. No.	**M.A.C.P. No.**	**Amount Claimed (Rs.)**
1.	No. 922 of 1998	4,50,000/-
2.	No. 362 of 1999	2,50,000/-
3.	No. 363 of 1999	30,00,000/-
4.	No. 364 of 1999	4,50,000/-

3.2 The details of the respective claim petitions are as under ;

(a) Claim Petition No. 922 of 1998 was filed by the legal heirs and representatives of deceased Rafikbhai Babubhai Sheikh, (hereinafter referred to as "the driver" or "the representative of the driver" as the case may be") who was driving the motor-car in question.

(b) Claim Petition No. 362 of 1999 was filed by the legal heirs and representatives of deceased Tulsiben Ashokkumar Shah, daughter of the owner of the Car.

(c) Claim Petition No. 363 of 1999 was filed by the legal heirs and representatives of deceased Ashokkumar Mohanlal Shah, owner of the Car.

(d) Claim Petition No. 364 of 1999 was filed by Arunaben Ashokkumar Shah, wife of deceased Ashokkumar Mohanlal Shah, i.e. widow of owner of the Car.

3.3 It was alleged in the claim petitions that the accident in question occurred as a result of the rash and negligent driving by the Driver of the Tanker and, therefore, the same deserve to be allowed.

4.0 The Tribunal, after hearing the parties, partly allowed the said claim petitions and held the opponents jointly and severally liable to pay the amount so awarded along with interest @ 12 % per annum from the date of the petitions till its realization

with proportionate costs within a period of three months from the date of the award. The amounts so awarded in the claim petitions are as under ;

Sr. No.	M.A.C.P. No.	Amount Awarded (Rs.)
1.	No. 922 of 1998	3,23,200/-
2.	No. 362 of 1999	1,16,000/-
3.	No. 363 of 1999	24,20,000/-
4.	No. 364 of 1999	3,00,000/-

5.0 Mr. Rajni H. Mehta learned Advocate for appellant – Insurance Company submitted that from the Panchnama Exhibit-52, it is evident that the Driver of the motor-car was driving the vehicle on the wrong side of the road while the Tanker was being driven on the correct side. He has, therefore, submitted that the finding of the Tribunal that the Driver of the motor-car i.e. deceased – Rafikbhai was negligent only to the extent of 20 % is improper.

6.0 Learned Advocate for the appellant contended that the Tribunal has committed serious error in awarding a multiplier of 15 years for computing the amount of compensation in Claim Petition No. 363 of 1999 inasmuch as there is no evidence on

record to adopt the said multiplier. He has submitted that at the time of the said accident since the deceased was aged about 44 years, the Tribunal ought not to have awarded such a high multiplier and, hence, the same is required to be reduced.

6.1 Learned Advocate has relied upon a decision of the Apex Court in the case of *Tamil Nadu State Transport Corporation Ltd., V/s. S. Rajapriya & ors.* reported in *2005 A.C.J. 1441* wherein the Court has laid down certain criteria for the choice of multiplier and the assessment of multiplicand in cases of fatal accidents for the determination of the amount of compensation.

6.2 Learned Advocate has also relied upon a decision of the Apex Court in the case of *Managing Director, T.N.S.T.C. Ltd., V/s. K. I. Bindu & ors.* reported in *(2005) 8 S.C.C. 473* and, more particularly, the observations made in Para 14, which reads as under ;

> "The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest

> appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last".

6.3 Similar principle has been laid down by the Apex Court in the case of *New India Assurance Co. Ltd., V/s. Charlie & anr.* reported in *2005 A.C.J. 1131* wherein the Court discussed the principles of computation of compensation and on the aspect of quantum of interest, after considering the facts of the case, the Apex Court reduced the rate from 9% per annum to 7.5% per annum from the date of filing of the claim petition till its realization.

7.0 Learned Advocate for the appellant submitted that so far as Claim Petition No. 363 of 1999 is concerned, the Tribunal has arrived at the datum figure of Rs.24,00,000/- by assessing the prospective income of the deceased at Rs.20,000/- per month and by adopting a multiplier of 15 years. He has submitted that while arriving at the said figure, the Tribunal has deducted 1/3rd of the amount towards personal expenses but, has not deducted the amount payable towards income-tax. Therefore, the said

income arrived at by the Tribunal is required to be reduced considerably.

8.0 Learned Advocate for the appellant further contended that the Tribunal ought to have deducted an amount equivalent to 20 % of the amount so awarded to the owner of the motor-car since the the liability of the driver of the motor-car was assessed at 20%. However, since no such deduction has been made, the impugned award of the Tribunal is bad in law and is required to be modified.

9.0 Learned Advocate for the respondent - claimants submitted that the Tribunal has rightly awarded the amounts in question since the accident had occurred on account of the rash and negligent driving by the driver of the Tanker. He has submitted that so far as Claim Petition No. 363 of 1999 is concerned, the Tribunal has not taken into consideration the income under the head of future loss of income of the deceased, as has been held in the case of *U.P. State Road Transport Corporation V/s. Trilok Chandra* reported in *1996 (4) S.C.C. 362*. He has, therefore, submitted that if the principle laid down in the said decision is followed, then the prospective income of the

deceased would come at Rs.30,000/- per month consequently, resulting into an increase in the amount of compensation. Hence, the Tribunal was completely justified in awarding the said amount of compensation and no interference is required by this Court in these appeals.

9.1 Learned Advocate for the claimants has relied upon two decisions of the Apex Court in the cases of *S. Chandra & ors. V/s. Pallavan Transport Corporation* arising from Civil Appeal No. 539 of 1994 decided on 13.01.1994 and *Kader Kunj & anr. V/s. Maheshwaran Pada Nair & ors.* arising from Civil Appeal No. 2291 of 1999 decided on 12.04.1999. He has, therefore, submitted that the multiplier adopted by the Tribunal is just and reasonable and no interference is required by this Court in these appeals.

10.0 Heard learned counsel for the parties and perused the documents on record. From the panchnama Exhibit-52 as well as the photographs Exhibit-110 of the place of incident, it appears that a head-on collision had taken place between the two vehicles in question. In the said accident, three persons expired, including the driver of the motor-car and one sustained severe bodily injuries. The right side of both the vehicles were extensively

damaged meaning thereby, that both the vehicles were being driven on the correct side of the road. Needless to say that it was the duty of both the drivers to drive their respective vehicles in a prudent manner and, had, they exercised a degree of caution, then the accident in question could have been averted. Tanker being a heavy vehicle, its driver ought to have exercised a higher degree of caution, as compared to the driver of the Car. Considering the documentary evidence on record, we are of the opinion that the Tribunal has rightly apportioned the negligence in the ratio of 80 to 20 to the driver of the Tanker and the driver of the Car and we find no reason to interfere with the same.

➔ **FIRST APPEAL No. 1846 / 2002 - M.A.C.P. No. 922 / 1998**

11.0 The claimants have produced on record the driving licence and the birth certificate of the deceased – driver on record at Exhibits - 37 & 38 respectively. From the said documents, it is evident that the deceased was aged about 29 years on the date of the accident. The widow of the deceased, original applicant no. 1, has deposed that the deceased was working as a driver with Ashokbhai Mohanlal Shah, the owner of the motor-car, who also expired in the said accident, since last about four

months and that he was earning Rs.3,000/- per month towards salary plus an amount of Rs.50/- per day, if he had to go out on duty. However, no documentary evidence to that effect has been produced on record.

11.1 Considering the facts and circumstances of the case and the documentary evidence on record, we find no reason to disbelieve the deposition of the claimant with respect to the monthly earning of the deceased and the Tribunal has rightly assessed the prospective income of the deceased at Rs.3,000/- per month. Since the deceased was aged only about 29 years at the time of the accident, the Tribunal has adopted a multiplier of 16, which, in our opinion, is just and reasonable. After deducting 20% of the amount towards contributory negligence, the Tribunal awarded a total amount of Rs.3,23,200/- towards compensation. We are in complete agreement with the reasonings given by and the findings arrived at by the Tribunal and, hence, find no reason to interfere with the same qua the order passed with regard to the Claim Petition No. 922 of 1998.

➔ **FIRST APPEAL No. 1847 / 2002 & X-OBJECTION No. 7 / 2007 -**

M.A.C.P. No. 362 / 1999

12.0 The deceased was aged about 14 years at the time of the accident. The said fact is evident from the PM notes of the deceased at Exhibit-56, birth certificate at Exhibit-77 and other academic certificates at Exhibits-72 to 86. Keeping in mind the fact that the deceased was studying in the 9th Standard and the aforesaid documentary evidence, the Tribunal has assessed the prospective notional income at Rs.1,500/- per month adopted a multiplier of 16. In our opinion, the Tribunal, after considering each and every aspect of the case, has awarded an amount of Rs.1,16,000/- as against the claim of Rs.2,50,000/-, which is just and reasonable and, hence, we find no reason to interfere with the same. Accordingly, the cross-objection filed in this Appeal also deserves to be dismissed.

➔ **FIRST APPEAL No. 1848 / 2002 & X-OBJECTION No. 8 / 2007 - M.A.C.P. No. 363 / 1999**

13.0 Considering the documentary evidence on record, we have no reason to disbelieve that the age of the deceased at the time of the accident was around 44 years. The claimants have produced on record documentary evidence vide Exhibit-49

showing that the deceased was earning Rs.20,000/- per month towards salary. They have also claimed that the deceased was also doing construction and brokerage work. However, no evidence to that effect has been produced on record.

13.1 Having gone through the record, we find no infirmities in the findings arrived at by the Tribunal, while assessing the prospective income of the deceased at Rs.20,000/- per month. As contended by the learned Advocate for the appellant – Insurance Company, the Tribunal has not deducted the amount towards income-tax and income under the head of future income, while arriving at the prospective income of Rs.20,000/-. Now, even if the said contention raised by the appellant is accepted, the same would not have any bearing on the prospective income arrived at by the Tribunal inasmuch if the said factors are taken into consideration, the income would go on the higher side.

13.2 However, when the claimants have produced on record documentary evidence vide Exhibit-49 to prove the salary so received by the deceased, which was not disputed by the

opponents in the cross-examination of the claimant, the Tribunal has rightly assessed the prospective income of the deceased at Rs.20,000/-. Undisputedly, the deceased was aged around 44 years at the time of the accident and the Tribunal has adopted a multiplier of 15 for assessing the amount of compensation.

13.3 The assessment of damages to compensate the claimants is beset with difficulties because from the nature of things, it has to take into account many imponderables, i.e. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period etc,. The choice of multiplier is determined by the age of the deceased or that of the claimant, whichever is higher and, by the calculation as to what capital sum, if invested, at a rate of appropriate Interest, would yield the claimant by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed over the period for which the dependency is expected to last. As per the Second Schedule to the Motor Vehicles Act, 1988 the appropriate highest multiplier is held to be 18, which is for the age group of 21 to 25 years and the

lowest is with respect to the age group of 60 to 70 years. However, it is well settled by a catena of decisions of this Court as well as the Apex Court that the Second Schedule is to be used as a guide and not as a ready referencer.

13.4 In the present case, undisputedly, the deceased was aged around 44 years at the time of the accident. However, the multiplier of 15 adopted by the Tribunal is on the higher side. Keeping in mind the principle laid down by the Apex Court in *Managing Director - TNSTC Ltd.,* case (supra) and taking into account the relevant factors and the age of the deceased, we are of the opinion that it would be appropriate to apply the multiplier of 11 in place of 15. Since the prospective income of the deceased has been assessed at Rs.20,000/- per month, the yearly income would come to Rs.2,40,000/-. After deducting 1/3rd of the amount towards personal expenses of the deceased, the balance amount would come to Rs.1,60,000/- and by adopting a multiplier of 11, the amount of compensation would come to Rs.17,60,000/-, instead of Rs.24,00,000/-, as awarded by the Tribunal.

13.5 The deceased was the owner of the Car involved in

the accident which is evident from the R.C. Book of the vehicle at Exhibit-60. While computing the amount of compensation, the Tribunal has not deducted the amount equivalent to 20% towards contributory negligence, which ought to have been deducted. Thus, by deducting 20% of the amount towards contributory negligence, the resultant amount would come to Rs.14,08,000/-. To this, we could add a sum of Rs.25,000/- for loss of estate and a sum of Rs.10,000/- for loss of love and affection. Thus, the claimants would be entitled for a total amount of Rs.14,43,000/- towards compensation in this petition. The Appeal and cross-objection are, therefore, partly allowed.

➔ **FIRST APPEAL No. 1849 / 2002 - M.A.C.P. No. 364 / 1999 (X-Objection Stamp No. 96 / 2002 dismissed for default on 28.11.2005.**

14.0 The claimant is the widow of deceased – Ashokkumar Mohanlal Shah. In the said accident, the claimant suffered serious bodily injuries which resulted into 25% partial permanent disability. The said fact is evident from the disability certificate produced vide Exhibit-114. The claimant was serving in a nationalized Bank and had already put in about 22 years of service prior to the

incident in question. From the documents produced vide Exhibit-87, it appears that the said Bank has reimbursed some part of the expenses incurred by the claimant towards her hospitalization. In her deposition, the claimant has stated that her salary was Rs.12,000/- per month at the relevant point of time. However, no documentary evidence has been produced on record to that effect. Keeping in mind the fact that the claimant was a bank employee and had already put in 22 years of service and the document at Exhibit-108, the assessment of the prospective income of the claimant at Rs.14,321/- is proper and we find no reason to interfere with the same.

14.1 The Tribunal has adopted a multiplier of 5 on the basis that the claimant was still in service and that she was getting her salary regularly with all benefits. Accordingly, it awarded a total amount of Rs.3,00,000/- to the claimant by way of compensation. We are in complete agreement with the reasonings given by and the findings arrived at by the Tribunal and, hence, find no reason to interfere with the award passed qua this claim petition.

15.0 The Tribunal has fixed interest at the rate of 12 per cent per annum from the date of the claim petitions. Interest has to be

awarded keeping in mind the prevailing rate of interest in bank deposits. In the case of *Managing Director, TNSTC Ltd.,* (supra), the Apex Court has held that interest on the amount of compensation has to be awarded on the basis of the prevailing rate of interest in bank deposits.

15.1 Taking note of the prevailing rate of interest in bank deposits, we are of the opinion that it would be just and reasonable to award interest at the rate of 9 per cent per annum on the amount so awarded hereinabove from the date of the claim petitions till its realization in M.A.C.P. No. 363/1998. It is, however, made clear that since we have not interfered with the impugned award of the Tribunal qua M.A.C.P. No. 922/1998, 362/1998 and 364/1998, we have not disturbed the rate of interest as awarded by the Tribunal. Orders accordingly.

16.0 In the result, First Appeals No. 1846/2002, 1847/2002 and 1849/2002 are dismissed and First Appeal No. 1848/2002 is partly allowed. Cross-objection No. 7/2007 filed in First Appeal No. 1847/2002 is dismissed while Cross-Objection No.8/2007 filed in First Appeal No. 1848 of 2002 is partly allowed. The original opponents

are held jointly and severally liable to pay the sum as shown below to the claimants. The bifurcation is as under ;

Sr. No.	First Appeal	Amount (Rs.)
1.	No. 1846/2002	3,23,200/-
2.	No. 1847/2002	1,16,000/-
3.	No. 1848/2002	14,43,000/-
4.	No. 1849/2002	3,00,000/-

15.1 The appeals stand disposed of accordingly.

(Anil R. Dave, J.) (K. S. Jhaveri, J.)

pravin/*